revenues of the State had no claim on the profits of the planting industry, it is still more legitimate and proper to render the planters some assistance at a time when the State gets a portion of the duty on tea exported from Travancore. My main object then is to point out that the wording of the Bill is not justified by the reasons alleged in the Statement of Objects and Reasons. Here is a case of a general authorisation to cover the circumstances of a particular case, and what is worse, it is based on an incorrect principle. Let us authorise the Munsiff of Devicolam to try suits of the value of Rs. (5,000), if that course be indispensable. But, a general clause imported into the Civil Courts Regulation will offer temptations to several people, and among them, Members of the Popular Assembly, to suggest that the benefit of the clause may be extended to other localities as well. Considerations of prestige and convenience will induce the support of other agencies, and the Government may find themselves face to face with a volume of public opinion in its favour. It is a supreme matter of policy that laid down the rule that Munsiffs should not have jurisdiction to try suits of the value of more than Rs. (2,000). Bigger suits involve larger interests and require that they should be tried by officers of larger experience. I am therefore for confining the exception to Devicolam.

The amendment is defective even as regards Devicolam; for the Munsiff of that place is generally an officer of lower grade, comparatively new to the work. Considering the extended powers which he is to be invested with, it is necessary that such Munsiff should be the first in point of efficiency and seniority, whose next promotion is a Judgeship in the District Court. I would propose that the designation of such officer be changed into "Sub-Judge" from that of "Munsiff". If this is done, he could be empowered to try suits of the value of more than Rs. (5,000), which, under the suggested arrangement, have still to be tried by the District Judge at Parur, who holds his Court 90 miles away. If we are to help the people of Devicolam, let us give them all the help they require."

Mr Subba Aiyar said in reply as follows:—

"In the first place, with regard to the question of the general power that has been taken, I would say that it is necessary for the reason that we do not know whether the Devicolam Munsiff's Court will be at Devicolam or it will be shifted anywhere else. There is the safeguard that a recommendation has to proceed from the High Court. Only the particular officer that is recommended by the High Court will be invested with jurisdiction up to Rs. (5,000). It is said that it will be better to designate the Munsiff of Devicolam as a Sub-Judge. I fear there are difficulties which Mr. Velu Pillai has not taken into account. In the first place, irrespective of the value of the suits, whether it is Rs. 200 or Rs. 300, all appeals from the decisions passed by such an officer will have to come to the High Court. Secondly, a Munsiff has Small Cause jurisdiction up to Rs. 100. Ordinarily, the District Judges, as Sub-Judges, have no Small Cause jurisdiction. They have got it in particular classes of suits, namely, under the Jenmi and Kudiyan Regulation for a particular purpose. Lastly, I believe the incidental expenses with regard to a suit will be far heavier in a District Court than in a Munsiff's Court. The process fees, the petitions fees, the execution fees and other fees will be far heavier in a District than in a Munsiff's Court, and the clients will be put to unnecessary expenditure. For these reasons, I think that it is not practicable to change the designation of the Devicolam Munsiff into "Sub-Judge". With these observations, I beg to move that the principle of the Bill be affirmed."

Mr. Subba Aiyar's motion was carried.

Mr. Subba Aiyar said that, as the Bill comprised but one Section, there was no need to refer it to a select Committee. He therefore moved that the operation of the ordinary rules of business be suspended, so that the Bill might go through all the stages except the final reading.

Seconded by Mr. Sesha Aiyar.

Carried.

Mr. Subba Aiyar then moved that the Bill be read again on a future day of which notice should be given.

Seconded by Mr. Mahadeva Aiyar.

Carried.

## THE CHITTIES BILL.

Mr. Subba Aiyar next introduced the Chitties Bill, and spoke as follows :—

"SIR,

I beg to introduce a Bill to regulate chitties conducted in Travancore. The Bill has, with your permission, been duly published in the Government Gazette dated the 5th December 1916.

2. At a conference of District Judges and Munsiffs (both retired and in the service) held at the High Court, Trivandrum, on the 5th and the 12th Medom 1084 under the presidency of the late Mr. K. P. Sankara Menon, Puisne Judge of the High Court, for the consideration of the questions connected with the re-distribution of territorial jurisdiction of the several Courts necessitated by the Civil Courts Regulation, II of 1084, and the establishment of additional Courts to cope with the increasing litigation of the country, one of the subjects discussed was the necessity to devise some means by which a limit might be put to the number of Courts in this country. One of the conclusions arrived at by the conference was considered and approved by all the Honourable Judges of the High Court. Their views were accordingly communicated by the Registrar to the Chief Secretary to Government in his letter No. 1084,

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dated the 11th June 1909. The Registrar says in his letter that "The enactment of a Chitty Regulation is also suggested by the conference to diminish litigation. There are at present several sorts of chitties and 15 per cent. of the suits in the Munsiffs' Courts relate to chitty transactions. Many of the prevailing chitties resemble lotteries, and lotteries have been defined to be 'games of chance the necessary effect of which is to beget a spirit of speculation and gaming that is often productive of serious evils' (1 M. H. C. R. page 449). Section 293 para 2 of our Penal Code is too comprehensive and would make even ordinary chitties illegal. Some chitties are of a fraudulent and mischievous character, while others are of the nature of harmless loan transactions in which each subscriber gets a loan from a common fund. The High Court are of opinion that it is high time for the Legislature to define what are legal chitties and what not, what are the powers and rights of a foreman and a subscriber and what their mutual liabilities are. They think that a well-thought-out legislation on the subject is necessary in the interests of the public." The above conclusion may therefore be said to be that of the whole Judiciary in Travancore.

3. At the Eighth Session of the Sri Mulam Popular Assembly held in 1912, it was represented by Mr. Mathevan Kesavan (Member, Neyyattinkarai taluk) that chitties were a source of litigation and loss to the poor people in the State. The foremen of the chitties generally alienated their properties after starting the schemes, with a view to defraud the subscribers. Whenever a prized member defaulted to subscribe, the foreman at once took the opportunity to realize all the dues together and appropriated them to his own use, while, if a prize-winner sued for his prize, he could not realize anything from the foreman. Another difficulty was that the non-prized subscribers could not withdraw from the scheme without forfeiting what had been already paid by them. The poor people in the country parts were not aware of the existence of the Savings Bank system, to utilise its advantages. The Member therefore prayed that, considering the difficulties of the poor people in the matter of chitties, the Government, with a view to safeguard the interests of the people, might be pleased to direct that a chitty foreman should submit his scheme for the approval and sanction of the Government, and that, after obtaining the sanction, the foreman should furnish property security for at least one-half of the total capital of the scheme.

4. The question was referred to the High Court and the views of the High Court were communicated by the Registrar in his letter No. 1613, dated the 22nd August 1912, to the effect that a "chitty Regulation is desirable and feasible. But the High Court would leave it to Government to frame one on whatever lines they consider it feasible". After the usual reference to the Head Sirkar Vakil as to the feasibility of a Bill and also as to the lines on which a Bill may be drafted, the Government passed Proceedings dated the 25th January 1914 that legislation was necessary and that the necessary steps would be taken. The present Bill has therefore been drafted to give effect to the said Proceedings of the Government.

5. Before explaining the various provisions of the Bill, it may be well to meet a suggestion that may be made by some that the Travancore Companies Regulation may be made applicable to chitties. The Companies Regulation applies only to a company or partnership or to an association formed for the purpose of carrying on any business that has for its object the acquisition of gain'. The words 'partnership', 'company' and 'association' have been explained by James L. J. in 15 Ch. D. page 247. The main test on which one can come to the conclusion whether any transaction will fall under any of the three classes is whether there is a contract between the members themselves creating joint or mutual rights and obligations. The observations of James L. J. with regard to the shareholders in that case will apply with considerable force to the subscribers in a chitty. He says 'They are from the first entire strangers who have entered into no contract with each other, nor has either of them entered into any contract with the trustee on behalf of the other'.

6. The question whether a chitty or a kuri as it is called in Malabar is a company requiring registration under the Companies Act formed the subject of some decisions of the Madras High Court. In 19 Madras page 35, it was held that it was a company and required registration under the Act. The matter came up again in 20 Madras page 68, wherein it was held that "to constitute an association within the meaning of the Section the existence of a legal relation between more than twenty persons giving rise to joint rights or obligations or mutual rights and duties is absolutely necessary. Whereas in the case of a kuri, no such relation exists between the various persons who have executed the document. The only persons associated with each other in the sense of possessing joint rights or being subject to joint obligations or of having mutual rights and duties are the two proprietors (the foremen)". This difference of view between the two cases led to the Full Bench ruling reported in 29 Madras page 477. The Full Bench held that the test to be applied in cases of this class is the one laid down in 20 Madras, *viz.*, "whether there is a legal relation giving rise to joint rights or obligations or mutual rights and duties". They answered the question in the negative, and held that a kuri does not fall within Section 4 of the Companies Act of 1882.

7. Coming to our own High Court, it has been laid down, in 15 T. L. R. 133, that a chitty is not a partnership "as mutual agency—the test of partnership—is wholly wanting".

8. Thus then, it is clear that the reported rulings go to establish that a chitty does not fall under the Companies Regulation and as such, the Travancore Companies Regulation will not apply.

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9. Further, the Companies Act is intended, in the words of James L. J., "to prevent the mischief arising from large trading undertakings being carried on by large fluctuating bodies so that persons dealing with them did not know with whom they were contracting and so might be put to great difficulty and expense which was a public mischief to be repressed". This state of affairs does not exist in the case of a chitty as the subscribers join a chitty started by a foreman whom they will know and who is responsible for the proper conduct of the chitty.

10. For the above reasons, the Companies Regulation cannot be made applicable to chitties, and it is therefore necessary to resort to separate legislation.

11. It is next desirable to consider the suggestion of the High Court that the new Bill should lay down what are legal chitties and what not. It is a matter of common knowledge that ordinarily there are two classes of chitties—the auction and prize chitties. In these chitties the subscribers contribute a certain sum of money or quantity of grain for a definite number of instalments at regular intervals and each in his turn gets the whole of the contributions for any particular instalment. The order in which a subscriber gets the said amount is determined by a lot or by a bid in auction. These chitties are perfectly harmless and have therefore to be declared legal.

12. There are lotteries on the other hand which are purely games of chance in which a few alone out of a large number get prizes and the rest get nothing. The prize-winners get an amount out of all proportions to their contribution. These, as observed in 1 Mad. H. C. R. page 449, beget "a spirit of speculation and gaming that is often productive of serious evil". This evil has been recognised to be so serious as to be penalised. Section 293 of the Travancore Penal Code enacts "whoever keeps an office or place for the purpose of drawing any lottery not authorised by Government shall be punished with imprisonment of either description which may extend to six months or with fine or with both", and para 2 of the same Section runs thus—"whoever publishes any proposal to pay any sum or to deliver any goods or to do or forbear doing anything for the benefit of any person on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery shall be punished with fine which any extend to one thousand rupees." Thus then, keeping a lottery house without the sanction of Government or publishing a prospectus for starting a lottery is liable to be punished. There could therefore be no doubt that a lottery as defined above is illegal.

13. There are however other kinds of chitties which though not ordinarily called lotteries may fall within the definition of the same. The chitty that led to the ruling reported in 18 T. L. R. page 56 is one of that class. In this chitty there were 200 tickets each valued at Rs. 1¼ a month. Thus every month there was a collection of Rs. 250. There were only to be 40 monthly drawings and each prize-winner was according to the number of the particular instalment to be paid at the rate of Rs. 25, 37½, or 50, as the case may be, and the prize-winner was not required to subscribe after getting the prize. The amounts that were left at each chitty after paying the prize-winner were with the foreman, all the unprized subscribers getting their contributions of Rs. 50 at the 41st instalment. The foreman had the use of a very large amount of money for 40 months. The transaction was declared to be a lottery and very rightly by the High Court. The grounds of the decision are that—

i. unlike in the case of ordinary chitties the prize-winners do not take loans, being absolved from making future contributions;

ii. the foreman is enriched by an enormous sum realised as interest on the subscribers' moneys received by him; and

iii. a few only of the subscribers obtain prizes by lot and not all, as in an ordinary kuri.

The transaction was therefore held to be a gambling one within the meaning of the ruling in 1 M. H. C. R. 448. Such chitties have therefore to be declared as illegal.

14. There seems however to be yet another class of chitties conducted in Travancore. One such instance is detailed below. There are 150 subscribers each paying a monthly subscription of Rs. 10 for 92 instalments. Though a sum of Rs. 1,500 is collected every month, the prize-winner gets only Rs. 750 or including veethappalisa to the non-prized subscribers Rs. 900, the balance of Rs. 600 being with the foreman. This state of things continues up to the 34th instalment, and after that date 2 prizes are drawn every month for the next 58 months. Thus all the 150 subscribers will get a prize before the end of the scheme. This chitty differs from the 18 T. L. R., transaction in that the prize-winners have to pay subscriptions even after getting a prize, and secondly all the subscribers get prizes by turns. Thus, of the three grounds on which the decision in 18 T. L. R. is based, grounds 1 and 3 do not exist. The only ground that is common to this and the 18 T. L. R. case is that "the foreman is enriched by the enormous sum realised as interest on the subscribers' moneys". It is doubtful whether this by itself may make the chitty illegal. The transaction in question differs from an ordinary chitty in as much as the prize-winner is not entitled to the whole of the contributions of any particular instalment. The question is what to do with such class of chitties. Taking the chitty referred to above, for illustration, we find that at the end of the 34 instalments the amount in the hands of the foremen will be a principal sum of Rs. 20,400 to be paid to the prize-winners at the rate of 2 instalments every month. The interest accruing on the balance of collections up to the 34th instalment and that up to the closing of the chitty after the 92nd month will be enormous. Is it possible to safeguard the interests of the subscribers by allowing such a heavy sum to be in the hands of the

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foreman? Is there any guarantee that all the subscribers will be paid? Is not the amount of profit earned by the foreman out of all proportions to his trouble? If such classes of chitties are allowed to be legal, will it not be offering a premium to drive a coach on four over the 18 T. L. R. ruling? I think that justice requires that such chitties should be declared void though not illegal. To leave the chitty in question as it is without declaring it either legal or illegal will frustrate the very object with which the present Bill is drafted. The conduct of ordinary chitties is to be regulated by this legislation and the foremen may be put to some inconveniences if they want to start and conduct an ordinary auction or prize chitty. The foremen will have therefore recourse to the form of chitty under consideration and make an enormous profit without being governed by legislation and the subscribers may find it much more difficult to get back their subscriptions. Leaving the particular class of chitties as they are is therefore undesirable and it is therefore proposed to declare them void.

15. Keeping the above facts in view, the next question is how to frame a suitable definition of a chitty. The essentials of a chitty which as already stated have to be recognised as valid are—

(1) a number of persons should agree to subscribe a certain amount at regular intervals for a certain number of instalments;

(2) each in his turn as determined by lot or otherwise gets a prize;

(3) the prize amount is the total subscription for any particular instalment less any deduction that may be made for veethappalisa or other expenses.

The nature of a chitty transaction is as stated in 1912 M. W. N. page 1235 a bilateral contract between the foremen on the one side and each of the subscribers on the other. The proposed definition ought to contain these essential requisites.

16. A kuri as defined in 22 Madras 212 "is a transaction by which a number of persons agree that each shall subscribe a certain sum of money by periodical instalments and that each in his turn as determined by lot shall take the whole of the subscriptions for each instalment; all being returned the amount of their contributions, the common fund being lent to each subscriber to the kuri".

The defects in this definition are—

(1) it does not apply to auction chitties;

(2) it contemplates only money chitties and not paddy or grain chitties;

(3) it cannot be said to be a loan transaction in the case of a subscriber who gets his prize at the last drawing;

(4) strictly speaking the prize-winner does not get the whole of the subscriptions at any particular drawing. A deduction is made in the amount for distribution among the unprized subscribers. This amount may be fixed in the variola as in the case of what are called prize chitties, or may be determined in auction as in the case of auction chitties.

17. After the decision in 22 Madras was passed, the case in 15 T. L. R. 133 came up for decision. Venkoba Rao, C. J., defines a chitty "as a transaction by which a certain number of persons agree that each shall subscribe a certain sum of money or quantity of paddy by certain periodical instalments and that each in his turn as determined by lot should take the whole of the subscribed amount in each drawing. There is a kuri or chitty known as Lelachitty or auction chitty. In this the prize-winner is not determined by casting lots but the total collection is put up to auction and is paid to the bidder among the subscribers who offers the largest interest in the shape of discount. Taking the first mentioned arrangement, it seems that under the arrangement all the subscribers get a return of the amount of their contributions so that the concern is mutually a provident mutal benefit fund and the prize-winner simply gets in his turn a loan of the common money over and above his own contribution and neither the right of the subscribers to the return of their contributions nor to a loan of the fund is made a matter of risk or chance". The above passage fairly sets out at length the essentials of a chitty but it is too long for a definition. Following the definitions in 22 Madras 212, 15 T. L. R., 133, and 1912 M. W. N., page 1235, the definition in the draft Bill has been framed.

18. Two explanations have been added to the definition. They contemplate two classes of cases. The first explanation is intended to give a general idea as to what lotteries are. The second explanation refers to a transaction in which a prized subscriber does not get an amount equal to the difference between the 'chitty amount' and 'discount' as defined in this Regulation, and will, I believe, cover cases where a transaction though partaking generally of the nature of a chitty is not strictly within its definition.

19. The expressions 'chitty amount', 'prize amount' and others occurring in the Bill have been defined. The definition of the 'prize amount' includes the amounts due to fractional ticket-holders. In the case of chitties where prizes are drawn by lots, fractional tickets making up a full ticket are included in one ticket and lots are drawn. All the fractional prize-winners will be entitled to the whole of the prize amount and each will get an amount proportionate to his share of the ticket. In the case of auction chitties a full ticket is in some instances bid in auction and fractional ticket-holders making up one full ticket will join together and bid the same in auction. In this case the prize amount will be proportionate to the share of each. Sometimes however, a single ticket is divided into 2, 3 or 4 parts and each part is bid in auction separately. The discount agreed to by each bidder may vary so that each fractional ticket-

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holder will get his share of the chitty amount minus the discount on his particular portion as agreed to by him. The other definitions call for no remarks.

20. Having defined in Part I the expressions occurring in the Bill, it is next necessary to declare what are legal and what are illegal or void chitties. As has been already stated, chitty as defined in the Bill will be legal and other transactions which though partaking of the nature of a chitty and yet are not strictly within the definition of chitty are void. Section 4 declares what chitties are void and Section 5 declares a chitty legal if registered under the Regulation.

21. This naturally leads to the question how to regulate the chitties that are legal. This is provided for in Part II. In many cases a contention is raised by the foreman that a particular individual is not a subscriber. The variola may not be forthcoming, and even if it does, it may be that all have not signed it. Cases where the foreman cooks up a fresh variola are not uncommon. The Court has in each case to take evidence and come to a conclusion. This state of things has in my opinion to be remedied. Whether a particular individual is a subscriber or not ought to be beyond a doubt. It is therefore proposed that a foreman intending to start a chitty should have a variola, with the necessary details prepared. Each subscriber is required to sign it in the presence of a witness who attests the same. The variola should be produced before a Registrar by the foreman with a true copy of the same. The original is registered and the copy is returned with an endorsement that it is registered. The object of retaining the original and returning the copy is that the foreman may not tamper with the signatures in the original. The provision, to my mind, will remove all difficulties in the way of establishing whether a particular individual is a subscriber or not. When a doubt arises, the original in the Registrar's office may be called for. If a chitty is not registered as stated above, it will not be legal and will stand on the same footing as a company requiring registration under the Companies Regulation not being registered.

22. If a variola is registered under the Regulation, occasions may arise in which it is desirable to have the same amended. The amendment is required to be passed at a special meeting in which three-fourths of the number of ticket-holders are required to be present and the foreman should file a copy of the amendment with the Registrar failing which he is liable to a penalty. (Section 13).

23. The subscribers are not generally in a position to know what the variola contains. The foreman won't give the necessary information. Some foremen however take care to copy the variola in the kykanakku book issued to a subscriber and such a subscriber cannot complain of want of information. The latter practice may I think be insisted on. A foreman has therefore to supply every subscriber with a copy of the variola and also of subsequent amendments, if any, failing which the foreman is made liable to a penalty. (Section 11).

24. The next difficulty that has to be remedied is the contention that is sometimes raised as to whether a chitty was conducted on the due date and whether a person became a prize-winner or not. The foreman is therefore required to keep a minute of the proceedings of every chitty containing the required information and file a copy of the same with the Registrar (Section 12), failing which he is liable to a penalty.

25. Part III deals with the rights and duties of a foreman. The difficulty suggested by the Neyyattinkarai Member that the foreman alienates his properties after getting his prize and also the prize amount of some of the subscribers requires consideration. Generally, the foreman gets his prize at the first or the second drawing without any discount. The prize amount of at least one of the instalments will be with him for payment to the prize-winner. The minimum amount that has to be with him will consequently be twice the 'chitty amount'. It has therefore been provided that a chitty foreman should before starting a chitty give property security to the subscribers or in trust for them for twice the 'chitty amount'. This is not a novel provision. The practice obtains in Madura, Trichinopoly, Tanjore, Malabar and other British Indian Districts. It is a wholesome practice and I think requires to be adopted here. The case reported in 29 Madras 477 is one in which the foreman gave security to the subscribers. Provision has accordingly been made in the new Bill that a foreman should give security for twice the chitty amount. Any foreman contravening the provisions of this Section is made liable to a penalty. (Section 15). The Section sufficiently safeguards the interests of the subscribers and will, in future, put an end to persons of little or no means starting a chitty. It may be suggested that this provision may discourage all chitties in as much as respectable people may not care to start chitties after giving property security to the subscribers. It will be conceded that the person who is really benefited by the starting of a chitty is the foreman. It is unreasonable to suppose that the foreman will forego the profit that he hopes to make by a chitty owing to his sentimental objection to execute a security bond. Beyond registration expenses, the foreman has not to incur any expense. Though the majority of the subscribers, if not all, will be really losers by joining a chitty transaction, they view the chitty amount as a provident fund which may be depended upon in times of necessity. Nothing could be more disastrous than the inability of the foreman to pay the prize amount when due. Generally, a chitty has to run out a long term of years and it is not possible to expect that the foremen though solvent when the chitty is started will continue to be so till the end. The benefit that will accrue to the subscribers by the demand of security from the foreman far outweighs the inconvenience, if any, which the foreman will be put to. In these circumstances, no honest foreman could have any reasonable objection to give security. If, however, all the subscribers have such a confidence in the

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foremen that they think no security is necessary then they may under the Section by express written assent dispense with the security. But I believe such instances will be rare.

26. The foreman is required to give security for twice the chitty amount only. It may be suggested that if he does not pay the prize amount of any one drawing and proceeds to the next drawing he may have with him more than twice the chitty amount. Provision is therefore made that the foreman should pay the prize-winner before the next instalment. It is, however, a matter of common knowledge that some foremen always avoid payment to prize-winners on the ground that the subscribers do not offer sufficient security. It is therefore provided that if the prize amount due in respect of any instalment remains unpaid till seven days before the date of the next instalment, the foreman should invest the same in the Government Savings Bank or other security that may be approved by Government. (Section 17 (2)). As evidence of the fact of payment or investment, the foreman is required to file a copy of the acknowledgment taken from the subscriber or of the record showing investment in some Bank or security and to intimate the fact of the same to the subscribers, at the next instalment of the chitty. The fact of such intimation has to be entered in the minute. (Section 17 (4)). If a foreman fails to pay the prize-winner or invest the same, the chitty will be deemed to have terminated. (Section 32 (6)). These provisions are, I believe, ample enough to prevent the foreman from having with him more than twice the chitty amount.

27. The foreman is required to keep the books mentioned in Section 18.

28. The rights of the foreman are detailed in Section 16. The existing practice on the point is adopted without any modification.

29. In the case of joint foremen, all are jointly and severally liable to the subscribers unless specially provided for in the variola. (Section 19). This is only in accordance with the case-law on the subject. (S. A. 195 of 1069).

30. The personal credit and qualifications of the starters of a chitty are material elements in inducing subscribers to take tickets in a chitty, and a foreman cannot therefore withdraw without the written consent of all the subscribers. (S. A. 137 of 1070, A. S. 149 of 1072 and S. A. 334 of 1086). The existing law has been enunciated in Section 20.

31. Part IV deals with non-prized subscribers. A defaulting subscriber's name is liable to be removed and the foreman may substitute another. The foreman is required to give intimation of the fact of such removal to the subscriber concerned and enter the fact of removal and substitution in the books and a copy of such entry has to be filed with the Registrar. (Section 22.)

32. A defaulting non-prized subscriber is entitled to get his subscriptions when the chitty scheme has run out or earlier in case of collapse of the chitty. (2 Thandu Iyer's Rulings 139, 1 T. L. R., 64, 5 T. L. R., 88, 6 T. L. R., 98, S. A. 401 of 1065, S. A. 386 of 1069, S. A. 196 of 1072, A. S. 19 of 1074, A. S. 186 of 1078, S. A. 124 of 1079, A. S. 92 of 1079, S. A. 117 of 1080, A. S. 237 of 1084, C. M. Appeal 34 of 1087).

When the chitty collapses before the time fixed for termination of the same in the variola, it is necessary that the subscriber should have actual or constructive notice of such collapse. (Kolapa Pillai's Rulings, 243, 245 and 246). The existing law on the subject has been embodied in Section 23. The word in the Section is 'termination' and this as explained in Section 32 includes a case of collapse also. There are cases in which a provision is made in the variola that a defaulting non-prized subscriber should get back his subscriptions when the substitute gets the prize or bids in auction. Provision has therefore been made for such cases. In any case, the defaulter should have notice of the accrual of his cause of action. This has also been provided for in Section 23.

33. Part V deals with prized subscribers. Every prized subscriber has, if the foreman demands it, to give security to the foreman (Section 25), and to pay his subscriptions regularly according to the terms of the variola. I may here refer to the ruling in S. A. 570 of 1088 which lays down that "it is a well-established principle of law that a prized subscriber is bound to refund the money that he has received in excess of the subscriptions paid in by him. He has to do it only as the instalment falls due if the scheme is carried through, but if the scheme collapses he should refund it in a lump because the concern has practically gone into liquidation and has to be wound up, taking into consideration the equities of all parties concerned and with as little delay as possible to all parties in the concern." According to this ruling, though ordinarily a prized subscriber has to pay only at each instalment, he should pay in a lump if the scheme collapses as then the scheme practically goes into liquidation. I may say that there is no other ruling to the same effect. I should have adopted the ruling in Section 26 if that were the law of the State all along. It is doubtful if the ruling is sound. The reason given in the judgment is that when the scheme collapses it goes into liquidation. In the first place, it has to be observed that for the reasons already stated a chitty is not a company. Secondly, I do not think that in a winding up proceedings of a company the liquidator can insist on a debtor paying up his debt before the due date. If it is thought that in the interests of all the parties concerned it is desirable to close the proceedings as early as possible, the only way to do it is to sell the debt at its present worth. I have no doubt that, if a similar case comes up before the High Court, the ruling in S. A. 570 of 1088 will not be followed. I have therefore introduced in the Section the law as it was before S. A. 570 of 1088.

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34. Lastly, as to the foreman's right as against defaulting prized subscribers to recover the amount due in a lump. Section 27 lays down that the foreman cannot do so unless he has given a written notice of demand. This is in accordance with the law laid down in 18 T. L. R. 104 and 25 T. L. R. 142. The question whether the decision in 25 T. L. R. 142 is correct came up for consideration before the High Court after the Bill was drafted. It has been decided in 32 T. L. R. 139 that the dictum in 25 T. L. R. 142 based upon Article 60 of the Limitation Regulation cannot be extended to chitty hypothication bonds which are governed by Article 109 of the Limitation Regulation and that no written demand is in such cases necessary. In coming to the above conclusion, the learned Chief Justice has observed that 25 T. L. R. 142 has not been correctly decided and that no written demand is necessary in the case of simple instalment bonds. It is therefore necessary to consider whether 25 T. L. R. 142 should be given legal recognition in the Bill. Whichever view as to the interpretation of Article 60 may be correct, the Legislature has as pointed out in 25 T. L. R. 142 "a right to say to a party, though by contract you have got a certain right according to ordinary legal principles, you cannot sue for it and you shall not have that right unless you make a written demand and if you do not make the demand you shall have a right or cause of action only to sue for enforcement of a lesser right." The Bill has not therefore been since modified. It is for the Council to consider at the further stages of the Bill whether the ruling in 25 T. L. R. 142 or the observations of the learned Chief Justice in 32 T. L. R. 139 should be given legal recognition in the Bill.

35. Passing on to Part VI, the question of assignment of the rights of a foreman over the assets of a chitty concern, for example, the subscription due from the prized subscribers, has been the subject of judicial decisions for a long series of years. 3 T. L. R. 13 decided that such an assignment is wholly void. There were other decisions to the contrary, S. A. 302 of 1059 and 136 of 1062 holding that the assignments are only voidable. This difference of view in the two sets of rulings necessitated a reference to the Full Bench, and 5 T. L. R. 38 decided that such assignments are only voidable. This decision was approved in 15 T. L. R. 133 and followed in S. A. 37 of 1074 and S. A. 211 of 1080 and other cases. The present law on the subject may therefore be said to be that any alienation by a foreman of the assets of a chitty concern without the assent of all the unprized subscribers is voidable at their instance. S. A. 211 of 1080 further lays down that in case of dispute the burden of proof is upon the alienee to show that the assignment is not prejudicial to non-prized subscribers. The law laid down in the foregoing rulings has been adopted in Section 28.

36. The question of the alienation of the interest of a non-prized subscriber may next be considered. It has to be observed that in 14 T. L. R. app. 51, it has been held that if the assignee is solvent and "otherwise fit to discharge the duties and obligations of a share holder" the foreman is bound to recognise the assignment and to substitute the assignee as a subscriber. This ruling was followed in 1 T. L. J. 64. In the latter case Mr. Justice Ramachandra Rao observed "I am not quite satisfied that 14 T. L. R. app. 51 is a correct decision since the assignment in this case is the assignment of obligations. Vide 16 Bombay 441 and 33 Calcutta 702". But as he was bound by 14 T. L. R. app. 51 he concurred with his colleague in dismissing the appeal. The question came up for decision again in 4 T. L. J. page 175 wherein the previous decisions were followed. Mr. Justice Pandalai, however, agreed with Mr. Ramachandra Rao in expressing a doubt on the soundness of 14 T. L. R. app. 51. Though there has been a doubt expressed in some of the rulings, the existing law on the subject is that if the assignee is solvent and otherwise fit to discharge his duties the foreman is bound to recognise his assignment. In as much as a doubt has been expressed by two learned Judges and such view has been based upon some British Indian decisions, it is necessary to examine whether the British Indian rulings are against the current decisions of our High Court and, if so, whether in the new Bill it is desirable to adopt the British Indian decisions in preference to those of Travancore. 33 Calcutta 702 lays down the rule as to assignability of contracts. The rule is that the benefit of a contract, *i. e.*, "the beneficial right or interest of a party under the contract and the right to sue to recover the benefits created thereby" may be assigned. This rule is subject to two exceptions, "first, that the benefit sought to be assigned is not coupled with any liability or obligation that the assignor is bound to fulfil, and next, that the contract is not one which has been induced by personal qualifications or considerations as regards the parties to it". The question is whether the same is applicable to chitties and, if so, how far. In the case of a non-prized subscriber, since he has paid for a certain number of instalments, this amount he has a right to get back when the cause of action arises, *viz.*, when he gets the prize or when the scheme expires in due course or earlier in case of collapse, *i. e.*, at the termination of the chitty as defined in the Bill. The subscriber has got a beneficial interest in the amount which he could sue for when the cause of action arises. The relation between a foreman and a non-prized subscriber is that of a debtor and creditor. (5 T. L. R. 38 and 15 T. L. R. 133). The non-prized subscriber has, therefore, a beneficial interest in the chitty which he could assign. The next point for consideration is whether the same is coupled with a liability or obligation which the assignor *is bound to fulfil*. In other words, is a non-prized subscriber bound to perform his portion of the contract? Has the foreman a cause of action against such a subscriber? The Travancore rulings, beyond laying down that a non-prized subscriber, if he defaults, will be entitled to get the amount he has actually subscribed only at the expiry or collapse of the scheme, do not give a right of suit to a foreman against a non-prized subscriber to compel him to pay his subscriptions. The assignor, *i. e.*, the original subscriber himself is not *bound* to pay his future subscriptions in the sense that if he fails to do so he holds himself liable in damages at the suit of a foreman. If the

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assignor himself is not bound to pay future subscriptions, it cannot be said that the assignee is bound to do so. In these circumstances, I think it cannot be said that a non-prized subscriber has a liability or an obligation which he is *bound* to fulfil.

As for the second exception, it cannot be said that any personal skill is required of a subscriber and that any personal qualification beyond solvency induces a foreman to make one a subscriber. 16 Bombay 441 and 33 Calcutta 702 are not therefore strictly speaking applicable to an assignment by a non-prized chitty subscriber. At the same time, it has to be observed that it is necessary that the assignee should be capable of contracting and that he should also be solvent as otherwise the foreman may be put to serious inconveniences and difficulty. These are provided for in the 14 T. L. R., 1 T. L. J., and 4 T. L. J., cases quoted above and I do not think that any further safe-guard is necessary to protect the interests of a foreman. I may also observe that giving an absolute discretion to the foreman to recognise the assignment or not, as he chooses, will be fraught with considerable evil. If a non-prized subscriber becomes a defaulter, the foreman has generally to pay the subscriber only the actual amount subscribed for by him and even that only at the termination of the chitty. He may, therefore, in many cases, if not all, refuse to recognise the assignment. An honest subscriber finding no means to continue a chitty may be put to serious loss if he is not allowed to assign his interest to a solvent person. For these reasons the Travancore rulings have been adopted in Section 30. The consideration for the assignment should not under the contract be illegal or unlawful, in other words, the assignment should not be made to defeat the provisions of any law. (Section 6 of the Transfer of Property Act). This general provision of law has also been introduced in the Section.

37. With a view to protect the interests both of the foreman and of the subscriber, it is provided that when an assignment is made and recognised the same should be entered in the books and a copy of the entry filed with the Registrar.

38. Part VII deals with the termination of a chitty. As ordinarily understood, a chitty terminates when it has run out its period as mentioned in the variola or when the scheme collapses, that is, when the foreman fails to continue the chitty, whether owing to his own fault or the fault of other subscribers. But there are other cases when the chitty may be deemed to have terminated. These have been enumerated in Section 32. The proper conduct of a chitty mainly depends upon the personal qualification of a foreman. If he dies the subscribers could not be compelled to continue to subscribe. (23 T. L. R. 242).

The ruling in 23 T. L. R. is based on the analogy of a partnership concern. Though a chitty is not a partnership concern, some of the provisions of the Contract Act regulating 'partnership' are wholesome ones and may be safely adopted. The cases in which a partnership may be dissolved are detailed in Section 254. Clauses 1 and 2 of that Section have been adopted here as Clauses (3) and (4) of Section 32.

It has already been pointed out that a foreman cannot withdraw without the written permission of all the subscribers. If he does so, the only natural consequence will be to regard the scheme as having terminated. (Vide S. A. 334 of 1086). This is provided for in Clause (5) of Section 32. Clause (6) deals with a case where the foreman does not pay the prize winner nor deposits the prize amount in the Government Savings Bank or other approved security. In such cases, allowing the foreman to continue the chitty will be to allow him to have more money in his hands than he has given security for. It is therefore necessary that, if the provisions of Section 17 are not complied with, the chitty should be deemed to have terminated. Clause (7) is the ordinary case of collapse owing to the failure of the foreman to conduct the chitty. Clauses 1 to 7 may, no doubt, work some hardship in the case of some foremen. Some may have or leave behind them qualified heirs and it will be to the prejudice of the heirs, especially when the foreman has given security for twice the chitty amount, if they are not allowed to conduct the chitty. Such cases could be provided for by a provision in the variola or if the subscribers agree that the chitty may be continued in spite of the death or incapacity of the foreman, it may be so done. This has been provided for in the Section itself. In the case of joint foremen, a Proviso has been added that they may agree by a special resolution to the conduct of the chitty by the remaining foreman.

39. A copy of the special resolution has to be filed with the Registrar under Section 33.

40. When a chitty is deemed to have terminated, a non-prized subscriber is at once entitled to get the amount due to him. The scheme collapses owing to no fault of his. Ordinarily, he should get back the face-value of the receipts issued to him without deducting the veethappalisa received by him. If the parties choose they may modify the rule. Unless therefore there is a provision to the contrary, the rule will prevail. In the case of a defaulting non-prized subscriber, the rule ought not to apply. Section 34 is therefore made applicable subject to the provisions of Section 23.

41. At the termination of the chitty, if a distribution of the assets has to take place, the subscribers have a prior lien over the assets of the chitty in preference to the other creditors of the foremen. (S. A. 211 of 1080). The principle is also in accordance with Section 262 of the Contract Act. Section 35 is therefore intended to provide for the same.

42. Part VIII deals with the inspection of documents. It is very desirable that there should be somebody to see whether the books required to be kept by a foreman under Section 18 are kept by him. The Registrar is allowed to do so after giving due notice to the foreman.

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(Section 36). A foreman failing to render the necessary assistance to the Registrar for the inspection of documents or furnish the information called for by the Registrar makes himself liable to a penalty. (Section 38).

43. Part IX deals with the registration office and the levy of fees. This Part does not call for any special remarks.

44. Part X deals with miscellaneous provisions. Section 43 requires that no Court inferior to that of a First Class Magistrate should try offences against this Regulation. This is only in accordance with the provision in the Companies Regulation.

45. A provision similar to Section 44 is found in the Companies Regulation, and I think it is a wholesome provision. Unless there is some provision empowering the Magistrates to award the costs of the proceedings or a reward for the informant, a person may not take the trouble of giving the necessary information and offences against the Regulation may not come to light.

46. Section 45 also follows a similar provision in the Companies Regulation. If the foreman required to give information or file a true copy makes an intentionally false statement in any such document it is but necessary that he should be made liable for such a statement.

47. It may be considered that Section 47 is out of place in the Bill. No doubt it is. Strictly speaking it ought to be a provision in the 'Interest Regulation'. The law as it stands does not enable a Court to grant relief if the rate of interest in the case of grain is excessive. Interest at 20 per cent. in the case of grain is quite ordinary. The only restriction imposed by Regulation IV of 1010 is that the total amount of interest awarded by a Court should not exceed the value of the principal. In 23 T. L. R. 100, Sadasiva Iyer C. J., observes that "We have great hesitation to allow interest at the high rate of 50 per cent. as stipulated in the security bond, but the current of our decisions is against the interference by Courts with contract rates in so far as paddy transactions are concerned. In S. A. 144 of 1073, the Court says 'the law has not fixed a maximum rate of interest on paddy and the rate of interest for paddy awarded in this case (20 per cent.) being the agreed rate we allow plaintiff interest on each of the four sums above specified at this rate'. It is much to be desired that as in the case of money transactions (Vide Regulation I of 1010) the Court had the power to interfere and reduce interest in paddy transactions, when the stipulated rates exceed the sum, to 20 per cent." Though 20 per cent. is suggested in 23 T. L. R., I have followed Section 17 of the Jenmi and Kudiyan Regulation which allows only 18 per cent. interest in the case of michavaram payable in kind.

48. In the Bill no provision has been made for 'winding up' as in the Companies Regulation. Taking the transactions arising in a chitty into consideration I do not think any such provision is necessary. The Insolvency Regulation, VIII of 1090, may, if necessary, be applied to such transactions if any 'available act of insolvency' is committed by the foreman. Seeing that a foreman has to give security for twice the chitty amount, I do not think that the cases where the Insolvency Regulation itself will have to be applied will be very many. Sub-section (6) of Section 6 of Regulation VIII of 1090, however, lays down that the provisions of that Regulation may not apply to companies, associations, or partnerships registered under any Regulation for the time being in force in Travancore. It has been already pointed out that a chitty transaction will not be a business carried on by a company, association or partnership. However, to avoid any doubt or difficulty on the matter, Section 47 enacts that nothing contained in sub-section (6) of Section 6 of the Travancore Insolvency Regulation shall apply to a chitty registered under this Regulation.

49. Parts IV and V provide that if a non-prized or a prized subscriber defaults he will be liable to such consequences as are provided for in the variola. This may naturally suggest an inference that even though the variola contains provisions which are unconscionable or oppressive or opposed to any provision of law, the Courts are bound to enforce the same. To avoid any such misapprehension and to allow Courts ample discretion in the enforcement of the provisions in the variola, Section 48 provides that nothing contained in the Regulation shall affect the discretion of the Court for granting relief against any of the provisions in the variola if the same be unconscionable or opposed to any provision of law.

50. It may be doubted by some whether the Bill should be made applicable to chitties when the chitty amount is of a small value. I believe such chitties may be exempted from the operation of this Bill. It has therefore been provided in Section 49 that the Regulation will not apply to a chitty if the chitty amount or its value is less than one hundred rupees.

51. Section 50 empowers the Government to frame rules for the purposes of this Regulation.

52. I have now explained at length the various provisions of the Bill. While conforming generally to the existing law on the subject as evidenced by the various rulings of Our High Court, I have introduced some provisions which are new and which to my mind are very necessary in the interests of the general public. These are —

Firstly, that no foreman should start a chitty without giving security for twice the chitty amount;

Secondly, every variola containing the articles of agreement should be registered;

Thirdly, it is made obligatory upon the foreman to supply every subscriber with a copy of the variola as originally framed or subsequently amended;

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Fourthly, every foreman has to prepare a minute of the proceedings at every instalment of the chitty and file a copy of the same with the Registrar ;

Fifthly, every foreman is bound to keep a certain set of books, and a copy of alterations in the entries by the appointment of a substitute for a defaulting subscriber or by the recognition of an assignment by a non-prized subscriber has to be filed with the Registrar ;

Sixthly, if the prize amount due for any instalment remains unpaid till a week before the next instalment, the foreman should invest the same in some Government Savings Bank or other security approved by the Government and a copy of the acknowledgment or record evidencing investment has to be filed with the Registrar ;

Seventhly, the circumstances under which a chitty may be deemed to have terminated are also detailed ;

Eighthly, the inspection of the books kept by a foreman is provided for ;

Ninthly, the inspection of documents in the Registrar's office by any person is allowed on payment of a fee, and he may also have a copy or extract of the same on payment of a prescribed fee ; and

Tenthly, interest at the rate of more than 18 per cent. per annum in the case of grain cannot be awarded.

The new provisions are not very many and I believe compliance with these provisions by an honest foreman may not be a matter of any difficulty. I may add that the draft Bill was referred to the Honourable High Court for their views. They observe that they 'have already expressed their conviction that legislation on the subject is both desirable and feasible and the draft Bill before them has only confirmed it. The Bill appears to have firmly faced the mischief which the Legislature proposes to remedy and has made provisions against it which seem generally to be effective and satisfactory'. They have, however, made a few suggestions and several of them have been accepted. The remaining few have to be considered by the Select Committee and by the Council when the Bill is considered clause after clause. I hope the Bill will meet with the approval of the public. I therefore beg to move that the principle of the Bill be affirmed by the Council."

Seconded by Mr. Rengaswami Aiyengar.

Carried.

Mr. Subba Aiyar then moved that the Bill be referred to a Select Committee consisting of Messrs. Vieyra, Subrahmanya Aiyar, Rengaswami Aiyengar, Mahadeva Aiyar, Sesha Aiyar, Parameswaren Pillai, Velu Pillai, Kumara Pillai and the Mover, to report within four months.

Seconded by Mr. Rengaswami Aiyengar.

Carried.

## THE NANJINAD VELLALA BILL.

Mr. Subba Aiyar said that it was seen, from the memorials submitted to Government by members of the Nanjinad Vellalla community, that the community wanted a more comprehensive Bill containing provisions relating to the power of testamentary disposition, intestate succession, &c., and that the Bill, as it was, did not satisfy them. He therefore moved for permission to withdraw the Bill.

Seconded by Mr. Vieyra.

Carried.

## THE MARKETS BILL.

Mr. Subba Aiyar presented the report of the Select Committee on the Markets Bill, and moved that the report and the Bill be taken up for consideration by the Council.

Seconded by Mr. Mahadeva Aiyar.

Carried.

The provisions of the Bill having been approved by the Council, Mr. Subba Aiyar moved that the Bill be read again on a future day of which notice should be given.

Seconded by Mr. Vieyra.

Carried.

## THE CHRISTIAN SUCCESSION BILL.

*Section 3.*

Mr. Subba Aiyar moved that the words "date on which this Regulation comes into force be substituted for the words "first day of.....109 ", occurring at the end of Section 3.

Seconded by Mr. Rengaswami Aiyengar.

Carried.

*Section 26.*

Mr. Subba Aiyar moved that the words "or descendants" be inserted after the word "descendant", that the words "solely or jointly" be inserted after the word "shall", and that the word "they" be substituted for the words "he or she", occurring in line 4 of Section 26, in order to make the meaning more clear.

Seconded by Mr. Kuriyan.

Carried

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